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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/217,469	12/21/1998	MIKHAIL ZAYDMAN		8318

7590 09/30/2003

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EXAMINER

HOANG, TU BA

ART UNIT	PAPER NUMBER
3742	

DATE MAILED: 09/30/2003

31

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

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Commissioner for Patents

Responsive to communications filed on 23 May 2003.

Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer to take appropriate action (37 CFR 1.144). See MPEP 821.01.

Extensions of time under 37 CFR 1.136(a) will not be permitted as for the reason set forth in the attached Office communication.

**Reissue Applications**

Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,599,471 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

The drawing filed on December 21 1998 are accepted by the Examiner.

Claims 1-14, 29, and 31-35 are allowed in lieu of the Supplemental Declaration For Reissue filed May 23, 2003.

This application is in condition for allowance except for the following formal matters:

Newly submitted claims 36-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, 29, and 31-35 are, drawn to a compact smoking oven and a combination of which with a rotatable food support or accessories for smoking.
- II. Claims 36-37, drawn to a rotatable food support having flywheel.
- III. Claim 38, drawn to a rotatable food support having grate.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and at least one of II and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed in invention I does not require the particulars of the subcombination as claimed in invention II or III because the smoking oven of the combination invention I (such as claim 33) does not require the particular features such as "each of the rods is rotated about its axis in an **opposite direction** under the action of the flywheel" now appeared in the subcombination recited by claim 36 or 37 of invention II or "two rotatable **discs** being detachably **connected** to the rod and the **grate**" now appeared in the subcombination recited by claim 38 of invention III. Each of the set forth subcombinations has separate utility such as conventional cooking rotisseries for cooking pig, chickens (for invention II) or cooking fish baskets (invention III).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are

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shown to be separately usable. In the instant case, invention II has separate utility such as cooking rotisseries for whole chicken, pig, or meat load while invention III has its own separate utility such as rotating fish baskets. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 36-38 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03 and 1450 (for Reissue). Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper and therefore is made final. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

This application is in condition for allowance except for the presence of claims 36-38 to an invention non-elected by original presentation. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tu Ba Hoang whose telephone number is (703) 308-3303. The examiner can normally be reached on Mon-Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on (703) 308-1327. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.

tbh

August 6, 2003

  
Tu Ba Hoang  
Primary Examiner